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DATE: November 30, 2004

TO: Examiner Timothy D. Collins
TC Art Unit: 3643

Fax No.: (703) 872 9306

FROM: Beverly E. Hjorth

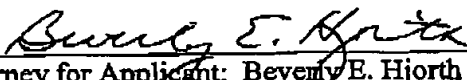
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Application No. 10/698,580
Filed Date: October 31, 2003
Confirmation No.: 1649A confirmation copy of this transmission will not be mailed unless the following is checked: []
MESSAGEPLEASE DELIVER DIRECTLY TO:
EXAMINER TIMOTHY D. COLLINS, Tel. (703) 306 9160
TC ART UNIT NO: 3643**FOR ENTRY**Enclosed for filing please find a: Transmittal Sheet and Response to
Election Requirement with TraverseThe Commissioner is hereby authorized to Charge Deposit Account No. 23-0804 for any additional
filing fees associated with this communication or credit any overpayment.
Attorney for Applicant: Beverly E. Hjorth
Registration No. 32,033

309282

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Rev 06/04

WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP

Ten Post Office Square
 Boston, Massachusetts 02109
 Telephone: (617) 542-2290
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Date: November 30, 2004

Via Facsimile**COMMISSIONER FOR PATENTS**

P.O. Box 1450

Alexandria, VA 22313-1450

Attorney

Docket No.: KAZAK-014XX

Sir:

In re application of: **JEROME P. FANUCCI**Entitled: **EXTENDABLE JOINED WING SYSTEM FOR A FLUID-BORN BODY**

Transmitted herewith is a response in the above-identified application. The following checked items are applicable:

- ☐ This is a Request for Continued Examination under §1.114; authorization is provided herewith to charge Deposit Account No. 23-0804 for the cost of same (\$_____) per §1.17(e).
☐ Enter the unentered amendment previously filed on _____ per §1.116.
- ☒ A Petition for Extension of Time for a 1 month is hereby made under §1.136(a); authorization is provided herewith to charge Deposit Account No. 23-0804 for the cost of same (\$55.00) per §1.17.
- ☒ In the event a Petition for Extension of Time is required by this paper and not otherwise provided, such Petition is hereby made and authorization is provided herewith to charge Deposit Account No. 23-0804 for the cost of such extension.
- ☐ Other:

CLAIMS AFTER AMENDMENT:	MINUS PRIOR PAID CLAIMS:	EQUALS PRESENT EXTRA CLAIMS:	RATE:	ADDITIONAL FEE:
Independent	5 - 5	= 0	x \$86.00 =	0
Total	60 - 60	= 0	x \$18.00 =	0
<input type="checkbox"/> Multiple Dependent Claims (1st presentation)			+ \$290.00 =	0
				0
Small Entity filing, divide by 2. Small Entity status must be asserted.				0
				0

- ☒ No additional fee. ☐ The fee has been calculated above; authorization is provided herewith to charge Deposit Account No. 23-0804 (\$_____) for the cost of same.
- ☒ The Commissioner is hereby authorized to charge payment of any additional filing fees under §1.16 associated with this communication or credit any overpayment to Deposit Account No. 23-0804.

I hereby certify that this correspondence is being sent via facsimile to Examiner Timothy D. Collins, TC Art Unit 3643, Fax No. (703) 872 9306, on November 30, 2004.

SUBMIT IN TRIPLICATE
 BEH/dkh/314186

Beverly E. Hjorth
 Attorney of Record: Beverly E. Hjorth
 Registration No.: 32,033

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PATENT

NOV 30 2004

Rev 06/04

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application : Jerome P. Fanucci
Application No. : 10/698,580
Filed : October 31, 2003
Confirmation No. : 1649
For : EXTENDABLE JOINED WING SYSTEM FOR A FLUID-
BORN BODY
Examiner : Timothy D. Collins
Attorney's Docket : KAZAK-014XX

TC Art Unit: 3643

I hereby certify that this correspondence is being sent via
facsimile to Examiner Timothy D. Collins, TC Art Unit 3643, Fax
No. (703) 872-9306, on November 30, 2004

By: Beverly E. Hjorth
Beverly E. Hjorth
Registration No. 32,033
Attorney for Applicant

RESPONSE TO ELECTION REQUIREMENT
WITH TRAVERSE

Via Facsimile
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Election of Species Requirement dated
October 12, 2004, Applicant makes the following election, with
traverse.

Applicant elects: c,i,2,a,ii,1,b,iii,a

WEINMANTEN, SCHUBERT,
GAGNEBIN & LEBOVICI LLP
TEL. (617) 542-2280
FAX (617) 542-2280

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Claims 1-12, 15, 16, 18-26, 28-33, 37, 39, and 41-44 are readable thereon.

At least claims 1-11 are generic to all species.

As grounds for traversal, Applicant notes the following:

Regarding the Examiner's fifth choice (referring to approximately claims 24 and 27), Applicant notes that the Examiner's description of "wings are made of a composite with core of fiber" is not correct. Rather, as recited in claim 24, the correct recitation is "a core within the portion of the fibers." Accordingly, species ii is selected with this understanding.

Regarding the Examiner's sixth choice (approximately claims 31 and 32), Applicant cannot make an election, because the Examiner has not explained the difference between the two species. With this understanding and to comply with 35 U.S.C. § 121, Applicant has selected species 1.

Regarding the Examiner's seventh and eighth choices (approximately claims 33-36), Applicant notes that the location of the center of pressure of the wings can vary during deployment. See, for example, Applicant's specification at page 3, lines 11-18, and page 12, lines 15-33. Thus, these choices are not separate species.

Applicant further notes the following:

The MPEP states at § 806.04(b) (emphasis added):

Species, while usually independent, may be related under the particular disclosure. Where inventions as disclosed

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and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 - § 806.05(i). If restriction is improper under either practice, it should not be required.

Regarding related inventions, MPEP § 808.02 states:

Where the related inventions as claimed are shown to be distinct under the criteria of MPEP § 806.05(c) - § 806.05(i), the examiner, in order to establish reasons for insisting upon restriction, must show by appropriate explanation one of the following:

(A) **Separate classification thereof:** This shows that each distinct subject has attained recognition in the art as a separate subject for inventive effort, and also a separate field of search. Patents need not be cited to show separate classification.

(B) **A separate status in the art when they are classifiable together:** Even though they are classified together, each subject can be shown to have formed a separate subject for inventive effort when an explanation indicates a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.

(C) **A different field of search:** Where it is necessary to search for one of the distinct subjects in places where no pertinent art to the other subject exists, a different field of search is shown, even though the two are classified together. The indicated different field of search must in fact be pertinent to the type of subject matter covered by the claims. Patents need not be cited to show different fields of search.

Where, however, the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field

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of search, no reasons exist for dividing among related inventions.

Regarding the Examiners' first, second, third, fourth, and ninth species election choices (discussed more particularly below), the species presented by the Examiner are related, because they are subcombinations that can be used together. MPEP § 806.05(d). Thus, restriction of a type covered in MPEP § 806.05 - § 806.05(i) must also be determined. However, the Examiner has not made a determination of restriction under any of these types, including under MPEP § 806.05(d). Furthermore, the Examiner has not established reasons for insisting upon restriction, such as separate classification, separate status in the art, or a different field of search.

More particularly:

- Regarding the Examiner's first choice (approximately from claim 11), one embodiment can, for example, have an actuator element on and within both the forward wing and the aft wing.
- Regarding the Examiner's second choice (approximately from claims 12-13), one embodiment can, for example, have more than one actuator element of different types, such as a piezoelectric element and a shape memory alloy.
- Regarding the Examiner's third choice (approximately from claims 14 and 18), one embodiment can, for example, have an actuator element on both a pressure face and on a trailing edge.
- Regarding the Examiner's fourth choice (approximately claims 16 and 17), one embodiment can, for example, have an actuator element distributed along a wing and another actuator element at a discrete location.

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- Regarding the Examiner's ninth choice (approximately from claims 37-40, one embodiment can, for example, have both the forward wings and the aft wings coupled for simultaneous movement.

Accordingly, reconsideration and withdrawal of the election of species requirement is respectfully requested.

Examination of the merits is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney to discuss any matter that would expedite prosecution of the present application.

Respectfully submitted,

JEROME P. FANUCCI

By: 
Beverly E. Hjorth
Registration No. 32,033
Attorney for Applicant(s)

WEINGARTEN, SCHURGIN,
GAGNEBIN & LEOVICI LLP
Ten Post Office Square
Boston, MA 02109
Telephone: (617) 542-2290
Telecopier: (617) 451-0313

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